

Serial No. 10/758,244

Attorney Docket No. 11-216

REMARKS

The applicant appreciates the acknowledgement of the claim for priority under section 119 and the notice that the certified copy of the priority document has been received.

Claims 1-28 are pending. The applicant respectfully requests reconsideration and allowance of this application in view of the above amendments and the following remarks.

Claims 1-26 were rejected under 35 USC 103(a) as being unpatentable over "Applicant's admitted prior art" shown in FIG. 7, and pages 1-3 of the specification ("AAPA"). The applicant respectfully requests that this rejection be withdrawn for reasons including the following, which are provided by way of example.

As described in the application, the invention recognizes the problem of a timer count error increasing in a situation in which the CR oscillation frequency varies due to factors such as temperature variation or deterioration (Specification page 3, line 28 to page 4, line 8).

Independent claim 1 recites in combination, for example, "an electronic control unit for a vehicle... ." The unit includes "first oscillation means for supplying a main clock signal at the activation; and second oscillation means for supplying a sub-clock signal to carry out the timer count, with the accuracy of the timer count using said sub-clock signal being calibrated through the use of said main clock signal." (See also independent claim 14.) Thereby, the system can provide a low-power consumption vehicle electronic control unit having a capability of calibrating a time thereof by using an accurate but high power consuming oscillator as the first oscillating means, and a non-accurate but low power consuming oscillator as the second oscillating means.

The examiner contends that the recited invention is not identical to AAPA, but is not patentably distinct because AAPA would achieve the same end result.

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To properly reject a claimed invention, the examiner must establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness with respect to a claimed invention, all the claim limitations must be taught or suggested by the prior art reference (or references when combined). *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Moreover, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. If the examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of patent. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992).

Furthermore, where an element is recited in means-plus-function format, the examiner must find that a prior art element: (A) performs the function specified in the claim, (B) is not excluded by any definition provided in the specification for an equivalent, and (C) is an equivalent of the means-plus-function limitation. Factors that will support a conclusion that the prior art element is an equivalent are: (1) the prior art element performs the identical function specified in the claim in substantially the same way, and produces substantially the same results as the corresponding element disclosed in the specification. *Kemco Sales, Inc. v. Control Papers Co.*, 208 F.3d 1352, 54 USPQ2d 1308 (Fed. Cir. 2000); (2) a person of ordinary skill in the art would have recognized the interchangeability of the element shown in the prior art for the corresponding element disclosed in the specification. *Caterpillar Inc. v. Deere & Co.*, 224 F.3d 1374, 56 USPQ2d 1305 (Fed. Cir. 2000); (3) there are insubstantial differences between the prior art element and the corresponding element disclosed in the specification. *IMS Technology, Inc. v. Haas Automation, Inc.*, 206 F.3d 1422, 1436, 54 USPQ2d 1129, 1138 (Fed. Cir. 2000); (4) the prior art element is a structural equivalent of the corresponding element disclosed in the specification. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990), i.e., the prior art

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element performs the function specified in the claim in substantially the same manner as the function is performed by the corresponding element described in the specification. (MPEP § 2183.)

The applicant provides herein a selection of some examples of limitations in the claims which are neither taught nor suggested by AAPA.

As one example, the examiner argues that AAPA produces substantially the same results as the corresponding element. That is insufficient to conclude that an element of AAPA is equivalent because the prior art element must also perform the identical function specified in the claim in substantially the same way. The allegation that AAPA produces the same results as claimed overall, without regard to the elements, and without showing the same function and the same way, is insufficient to support a prima facie case of obviousness.

Moreover, there is nothing to teach or suggest the recited feature of the timer count using a sub-clock signal supplied from a second oscillation means which is calibrated by a main clock signal supplied from a first oscillating means when the electronic control unit is in an activated state. First, this claim limitation is neither taught nor suggested by any reference.

Next, the examiner seems to be of the opinion that it would be obvious to modify AAPA to provide the same result that AAPA allegedly already provides. However, a motivation to modify a reference to achieve the same result is no motivation at all. There is no motivation to modify AAPA when it allegedly already achieves the intended result.

Hence, AAPA fails to teach or suggest the combination of features recited in independent claims 1 or 14, when considered as a whole.

The dependent claims are deemed to be allowable not only for the reasons provided above, but also for additional features which are neither taught nor suggested by AAPA.

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Claims 1-26 were further rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 4,887,024, Sugiyama et al. ("Sugiyama") in view of U.S. Patent No. 6,087,598, Munch ("Munch"). The rejection is respectfully traversed for reasons including the following, which are provided by way of example.

In this case, the references, alone or combined, fail to teach or suggest all of the claim limitations.

Without conceding that Sugiyama discloses any feature of the present invention, Sugiyama discusses a person detecting device that detects the presence and absence of a person in a certain space such as a vehicle compartment. Munch is directed to a weight sensor that senses a load applied to a vehicle seat (Abstract).

The applicant provides herein a selection of some examples of limitations in the claims which are neither taught nor suggested by Sugiyama. The office action asserts that Sugiyama teaches "first and second oscillation means (within item 3) for supplying a main clock signal and a sub-clock signal to carry out the timer count." According to Sugiyama, element 3 includes a frequency divider circuit 33 and an oscillation circuit 32. In Sugiyama, the main clock signal and the sub-clock signal are produced by the same oscillating means 3 through the frequency divider circuit 33. The office action admits that Sugiyama fails to teach "the calibration aspect."

Recognizing that Sugiyama fails to teach and/or suggest the invention as claimed, Munch is cited to remedy the deficiencies. Nevertheless, Munch fails to remedy such deficiencies.

For example, the fact that the office action cites a single element in Sugiyama as meeting two separate recited elements is conclusive evidence that Sugiyama fails to teach both recited elements.

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Sugiyama and/or Munch fails to teach or suggest a "first oscillation means for supplying a main clock signal..." and a "second oscillation means for supplying a sub-clock signal ..."

Hence, Sugiyama and Munch, alone or in combination, fail to teach or suggest the combination of features recited in independent claims 1 or 14, when considered as a whole.

With respect to the rejected dependent claims, applicant respectfully submits that these claims are allowable not only by virtue of their dependency from independent claims 1 and 14, but also because of additional features they recite in combination.

New claims 27-28 have been added, and are believed to be patentable for reasons including these set out above. Support for the new claims is located in the specification as filed, for example, page 19, lines 19-25.

Applicant respectfully submits that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicant does not concede that the cited prior art shows any of the elements recited in the claims. However, applicant has provided specific examples of elements in the claims that are clearly not present in the cited prior art.

Applicant strongly emphasizes that one reviewing the prosecution history should not interpret any example applicant has described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, for the sake of simplicity, applicant has provided examples of why the claims described above are distinguishable over the cited prior art.

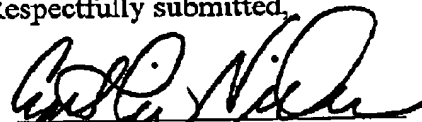
In view of the foregoing, the applicant submits that this application is in condition for allowance. A timely notice to that effect is respectfully requested. If questions relating to patentability remain, the examiner is invited to contact the undersigned by telephone.

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If there are any problems with the payment of fees, please charge any underpayments and credit any overpayments to Deposit Account No. 50-1147.

Respectfully submitted,


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